

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

IN RE:

MAX FRANKLIN,

CASE NO. 10-59583

CHAPTER 13

Debtor,

HON. PHILLIP J. SHEFFERLY

_____/

MAX FRANKLIN

Plaintiff,

v.

ADV. PROC. CASE NO. 10-06005

FIFTH THIRD MORTGAGE COMPANY

Defendant.

APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AND AFFIDAVIT IN SUPPORT

Plaintiff, Max Franklin, by his attorneys, William C. Babut, PC, state:

1. Plaintiffs' Complaint was filed with the Court on June 29, 2010, seeking entry of an Order holding that the second mortgage held by Defendant is unsecured.
2. The Defendant was served with process in this action on June 30, 2010 as appears from the Certificate of Service on file with the Court.
3. Defendant has not filed an answer or taken any other action as may be permitted by law.
4. More than thirty days have elapsed since the date of service of the Summons and Complaint.
5. On August 3, 2010, the Clerk's Entry of Default was entered against Defendant.
6. Pursuant to LBR 7055-1, a proposed Default Judgment is attached as Exhibit A.

THEREFORE, Plaintiff requests this Court enter a Default Judgment against Defendant as prayed for in Plaintiff's Complaint and in conformity with Plaintiff's proposed Default Judgment.

Dated: August 10, 2010

WILLIAM C. BABUT, PC
/s/Donald C. Wilson
Donald C. Wilson (P59433)
Attorneys for Plaintiff

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AFFIDAVIT IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Donald C. Wilson ("Affiant"), being duly sworn, deposes and says that he has prepared the foregoing Application for Default Judgment and believes the contents to be true of his own information, knowledge and belief.

Further, Affiant states that:

1. The Summons was issued on June 29, 2010.
2. The Summons and Complaint were served on June 30, 2010.
3. The Certificate of Service was filed on June 30, 2010.
4. No answer or responsive pleadings have been filed.
5. To the best of Affiant's knowledge, information, and belief, the Defendant is not in the military, nor a minor or incompetent.

/s/Donald C. Wilson

Subscribed and sworn to before me this
10th day of August, 2010.

/s/ Patricia Montgomery
Notary Public, Wayne County, Michigan,
acting in Washtenaw County.
My Commission Expires: July 30, 2012.

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FIFTH THIRD MORTGAGE COMPANY

Defendant.

DEFAULT JUDGMENT

Plaintiff having filed his Complaint to Avoid Unsecured Mortgage on Debtors' Residence on June 29, 2010; the Defendant having failed to answer or otherwise respond to the Complaint; Default having been entered; Plaintiffs having filed their Application for Entry of Default Judgment pursuant to LBR 7055-1; and the Court being otherwise fully advised in the premises:

IT IS ORDERED that:

That upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge order in bankruptcy case number 10-59583, the mortgage ("Mortgage") dated March 29, 2007, covering the following described property ("Property") situated in the Township of Ypsilanti, County of Washtenaw, State of Michigan, and further described as follows:

Lot 26, Gault Farms Subdivision Lakeview Estates, as recorded in Liber 13 on Page 12 and 13 of Plats.

Parcel No: K-11-15-287-026

more commonly known as 1322 Georgina Drive, Ypsilanti, Michigan 48198

recorded in the Washtenaw County Register of Deeds on April 10, 2007, Liber 4618, Page 788,

will be stripped from the Property and discharged.

IT IS FURTHER ORDERED That upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge in bankruptcy case number 10-59583, the debtor may record a certified copy of this order, with a copy of the debtor's Chapter 13 discharge attached, with the Washtenaw County Register of Deeds, which will constitute and effectuate discharge of the Mortgage.

IT IS FURTHER ORDERED That if the debtor fails to complete the debtor's Chapter 13 plan and obtain a Chapter 13 discharge order in bankruptcy case number 10-59583, this order does not affect the validity or enforceability of the Mortgage and may not be used in any subsequent bankruptcy case of the debtor either to compel the holder of the Mortgage to execute a discharge of the Mortgage, or to otherwise act as a discharge of the Mortgage.

EXHIBIT A